

Ruling 96-10

Vermont Department of Taxes

Date: May 3, 1996

Written By: Gloria Hobson, Business Taxes Policy Analyst

Approved By: Edward W. Haase, Commissioner of Taxes

[Taxpayer] requested a formal ruling to determine the applicability of Vermont's sales and use tax on sales to customers of tangible personal property and services through your telecommunications business. The advice in this formal ruling is based on the facts and description of services and sales in a letter dated April 25, 1995 signed by [Taxpayer] which you faxed to this office on November 22, 1995 and was forwarded to me on December 1, 1995.

Issue: Are rentals and/or sales of tangible personal property and services to provide paging services to customers subject to Vermont's sales and use tax?

Facts: [Taxpayer] is a telecommunications company whose principal business activity is pager sales and paging services. [Taxpayer] provides one-way paging service to its customers. The categories of sales made by [Taxpayer] include sales or rental of the paging devices, repair parts for pagers, labor for repairs, warranty or protection plans for pagers, charges for telecommunications services, initialization fees, and other administrative fees.

Ruling: [Taxpayer] provided a listing of their billing categories. Each category will be identified and described and a ruling given for each category.

1. One Way Paging Service - This charge is a monthly access fee for the paging system. The charge is a fee for the paging service. This service is not subject to sales tax. 32 V.S.A. §9771(1) imposes the tax on the retail sale of tangible personal property only.
2. Rental of Pager - [Taxpayer] charges its customers a base monthly charge for use of a pager. The charge for rental of the pager is subject to tax as a sale of tangible personal property. Sales is defined in 32 V.S.A. §9701(6) as "... any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, condition or otherwise, in any manner or by any means whatsoever for a consideration,..." [Taxpayer] collects the sales tax from its customer based on the monthly charge to the customer, and then reports and remits the tax to the Vermont Department of Taxes.

3. Maintenance Agreement Charge Optional - A base charge to the customer for monthly maintenance of the pager. The optional maintenance agreement charge is not subject to tax. The charge entitles the customer to a right to receive goods and services, but the maintenance agreement rights themselves are not the sale of tangible personal property. When tangible personal property is used to fulfill obligations under the agreement, [Taxpayer] is the user and pays use tax. If the agreement specifies for separate cost and billing of repair parts, [Taxpayer] is selling tangible personal property and is responsible for collecting the tax from the customer. The tax is based on the charge made to the customer.
4. Maintenance Agreement Charge Mandatory - A base charge to the customer for monthly maintenance of the pager. The mandatory maintenance agreement charge is subject to tax. Since the pager cannot be purchased or rented without the maintenance agreement charge, this charge is part of the selling price, even though it is separately billed. The tax is due on the amount of the full sales price of the property. 32 V.S.A. §9701(4).
5. Pager Protection Charge - Optional monthly charge to customer for protection if the pager is lost or stolen. The protection plan is not underwritten by an insurance company. The protection charge is not subject to tax. The charge is insurance against loss or damage of the pager. Insurance services are exempted under 32 V.S.A. §9701(6).
6. Pager Protection Deductible - The amount charged to the customer under the pager protection plan when a pager is lost or stolen. The deductible amount is not refunded to the customer should a lost pager be found. The pager protection deductible is not subject to tax. The charge is an additional insurance cost and not for the sale of tangible personal property. When the entity providing the protection plan replaces the pager, it is the customer and pays tax on its purchase of pagers.
7. Sale of Pager to Direct Customer - Charge for outright sale of pager to be utilized on paging system. This is a retail sale of tangible personal property and subject to the tax under 32 V.S.A. §9771(1). The tax is based on the sales price. 32 V.S.A. §9701(4). [Taxpayer] is a vendor within the meaning of 32 V.S.A. §9701(9)(A) and responsible for collecting the tax from its customers. The tax is collected on the charge made to the customer.
8. Sale of Pager to Resale Customer - Charge for sale of a pager to a reseller of [Taxpayer] pagers. This charge is not subject to the tax. The transaction is a sale for resale which is exempted from tax under 32 V.S.A. §9701(5). [Taxpayer's] reseller must present [Taxpayer] with a completed, valid resale exemption certificate at the time of the sale. [Taxpayer] keeps this certificate on file as documentation for a tax exempt sale. 32 V.S.A. §9745.
9. Sale of Parts - Sale of pager replacement parts to customer. The sale is a retail sale of tangible personal property and subject to tax. 32 V.S.A. §§9701(5) and 9771(1).

10. Customer Start-up Charge - The charge to initiate customer access to the paging system. This charge is in addition to billings for categories 1 through 4. This charge is not subject to tax. The transaction is for a service and not the sale of tangible personal property.
11. Material Charge for Repair Charge - Charge for materials used in the repair of the pager. The amount includes charges for materials not covered by the maintenance agreement charge. The material charge is subject to either the sales or use tax. Materials billed directly to the customer for pager repair is the sale of tangible personal property and [Taxpayer] collects the sales tax from the customer. 32 V.S.A. §9701(5). The tax is based on the selling price to the customer. 32 V.S.A. §9701(4). [Taxpayer] is the user of materials used to fulfill its maintenance agreement. 32 V.S.A. §9701(13). [Taxpayer] remits use tax to the Vermont Department of Taxes based on the cost to [Taxpayer].
12. Labor Charge for Repair - Charge for labor used in the repair of the pager. Amount includes charges not covered by the maintenance agreement charge. Labor for repairing the property sold (i.e. the pager) is exempt from sales tax if the charge is separately charged or stated on the invoice. 32 V.S.A. §9701(4).
13. Voice Mail - An additional charge to the paging service that allows a customer to receive a voice message. This charge is not subject to tax. The transaction is for a service and not the sale of tangible personal property.
14. Nationwide Paging - An additional charge to allow a customer to be paged anywhere in the United States. This charge is not subject to tax. The transaction is for a service and not the sale of tangible personal property.
15. NFS - Charge to the customer for a check not honored by the customer's bank. This charge is not subject to tax. The transaction reflects a charge for processing the customer's payment and not part of the selling price of the tangible personal property.
16. Reconnection Fee - Charge to the customer for reconnection after the customer has been disconnected for non-payment. This charge is not subject to tax. The transaction is a charge for initiating a service and not the sale of tangible personal property.
17. Collection Fee - Charge to the customer for submitting the customer's account to an outside collection agency. This charge is not subject to tax. The transaction is reimbursement to [Taxpayer] for purchasing the services of the collection agency to secure payment of the customer's account and not the sale of tangible personal property.
18. Late Fee - A percentage charge to the customer for delinquent payments. This charge is not subject to tax. The transaction is penalty amount for carrying the customer's account beyond the agreed upon time of payment and not part of the selling price for the tangible personal property.

19. Phone Number Charge Fee - A charge billed to the customer for changing their pager number. This charge is not subject to tax. The transaction is a charge altering the paging service and the paging service is not subject to tax.
20. Dispatch Services - Charge to the customer for dispatching a variety of alpha-numeric messages to the customer via a live operator. This charge is not subject to tax. The transaction is for a personal service and not the sale of tangible personal property.
21. FaxNow - A charge to the customer for sending a fax to a pager number. The fax is stored in a pager mailbox and then the customer may forward the fax to any fax machine. This charge is not subject to tax. The transaction is for a personal service and not the sale of tangible personal property.
22. Purchase of Pager for Resale by [Taxpayer] - Purchase of pager to be used for resale to the customer. The purchase is not subject to tax. Purchase of items for the purpose of reselling is exempt from tax. 32 V.S.A. § 9701(5). [Taxpayer] collects the sale tax from its customers upon sale of the pager. [Taxpayer] is required to register for a Vermont business account and present a completed resale exemption certificate to its vendor. 32 V.S.A. §§9707, 9745. If [Taxpayer] withdraws from its inventory pagers for its own business, [Taxpayer] becomes the user and is required to remit the use tax. 32 V.S.A. §§9701(13), 9773.
23. Purchase of Pager for Rental by [Taxpayer] - Purchase of pagers to be used for rental to Pagenet customers. The purchase is not subject to tax. Purchase of items for the purpose of renting the item for the entire period of its ownership is exempt from tax as a sale for resale. 32 V.S.A. §9701(4) and Reg. 1.9701(6)-2. Sale includes rental, lease or license to use or consume for which a charge is made. 32 V.S.A. §9701(6). [Taxpayer] collects the sales tax from its customer upon each rental payment. [Taxpayer] is required to register for a Vermont business account and present a completed resale exemption certificate to its vendor. 32 V.S.A. §§9707, 9745.
24. Purchase of Equipment - Purchase by [Taxpayer] of terminals, transmitters and control equipment used to provide paging service. The purchases are subject to tax if purchased or used in Vermont. The items are used by [Taxpayer] to fulfill its sale of services to its customers. The items are not for resale of tangible personal property to its customers. 32 V.S.A. §§9744(3), 9771(1), 9773(1).
25. Telephone Exchange Purchases - A charge by a local telephone company to [Taxpayer] for blocks of telephone numbers used to provide paging services. This charge is not subject to tax. The transaction is for the purchase of telephone services which are exempted from tax. 32 V.S.A. §9771(2).
26. Trunk Line Purchases - A charge by a local telephone company to [Taxpayer] for lease of telephone lines used to provide paging services. This charge is not subject

to tax. The transaction is for the purchase of telephone services which are exempted from tax. 32 V.S.A. §9771(2).

27. Nationwide Paging Purchased for Resale - The purchase of nationwide paging from a paging company to be resold to [Taxpayer] customers. This charge is not subject to tax. The transaction is for the purchase of a service and not the sale of tangible personal property.

28. Purchase of Repair Parts for Pagers Sold - The purchase of pager replacement parts to be resold to customers owning the pagers. The purchase is not subject to tax. This purpose of the purchase is to resell the parts to customers. A purchase for resale is exempted from tax. 32 V.S.A. §9701(5). [Taxpayer] collects the tax from its customers at the time of sale. See Category 22.

29. Purchase of Repair Parts for Pagers Rented - The purchase of pager replacement parts to be resold to customers renting pagers. The purchase is not subject to tax for parts sold to customers renting pagers. The purpose of the purchase is to resell the parts to the customers. A purchase for resale is exempt from tax. 32 V.S.A. §9701(5). [Taxpayer] collects the tax from its customers at the time of sale. See Category 22.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.